

1-1 By: Ellis S.B. No. 1886
1-2 (In the Senate - Filed March 11, 2009; March 24, 2009, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 May 11, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; May 11, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1886 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to diagnostic testing of pregnant women and certain
1-11 newborns.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. The heading to Section 81.090, Health and Safety
1-14 Code, is amended to read as follows:

1-15 Sec. 81.090. DIAGNOSTIC [SEROLOGIC] TESTING DURING
1-16 PREGNANCY AND AFTER BIRTH.

1-17 SECTION 2. Section 81.090, Health and Safety Code, is
1-18 amended by amending Subsections (a), (b), (c), (i), (j), (k), and
1-19 (l) and adding Subsections (a-1), (c-1), and (c-2) to read as
1-20 follows:

1-21 (a) A physician or other person permitted by law to attend a
1-22 pregnant woman during gestation or at delivery of an infant shall:

1-23 (1) take or cause to be taken a sample of the woman's
1-24 blood or other appropriate specimen at the first examination and
1-25 visit;

1-26 (2) submit the sample to an appropriately certified
1-27 [a] laboratory [approved under this section] for diagnostic testing
1-28 approved by the United States Food and Drug Administration for:

1-29 (A) [a standard serologic test for] syphilis
1-30 [approved by the board];

1-31 (B) [a standard serologic test for] HIV infection
1-32 [approved by the board]; and

1-33 (C) [a standard serologic test for] hepatitis B
1-34 infection [approved by the board]; and

1-35 (3) retain a report of each case for nine months and
1-36 deliver the report to any successor in the case.

1-37 (a-1) A physician or other person permitted by law to attend
1-38 a pregnant woman during gestation or at delivery of an infant shall:

1-39 (1) take or cause to be taken a sample of the woman's
1-40 blood or other appropriate specimen at an examination in the third
1-41 trimester of the pregnancy;

1-42 (2) submit the sample to an appropriately certified
1-43 laboratory for a diagnostic test approved by the United States Food
1-44 and Drug Administration for HIV infection; and

1-45 (3) retain a report of each case for nine months and
1-46 deliver the report to any successor in the case.

1-47 (b) A successor is presumed to have complied with this
1-48 section if the successor in good faith obtains a record that
1-49 indicates compliance with Subsections (a) and (a-1), if applicable.

1-50 (c) A physician or other person in attendance at a delivery
1-51 shall:

1-52 (1) take or cause to be taken a sample of blood or
1-53 other appropriate specimen from the mother on admission for
1-54 delivery; and

1-55 (2) submit the sample to an appropriately certified
1-56 [a] laboratory [approved under this section] for diagnostic testing
1-57 approved by the United States Food and Drug Administration for:

1-58 (A) [a standard serologic test for] syphilis
1-59 [approved by the board]; and

1-60 (B) [a standard serologic test for HIV infection
1-61 approved by the board; and

1-62 [(C) a standard serologic test for] hepatitis B
1-63 infection [approved by the board].

2-1 (c-1) If the physician or other person in attendance at the
 2-2 delivery does not find in the woman's medical records results from
 2-3 the diagnostic test for HIV infection performed under Subsection
 2-4 (a-1), the physician or person shall:
 2-5 (1) take or cause to be taken a sample of blood or
 2-6 other appropriate specimen from the mother;
 2-7 (2) submit the sample to an appropriately certified
 2-8 laboratory for diagnostic testing approved by the United States
 2-9 Food and Drug Administration for HIV infection; and
 2-10 (3) instruct the laboratory to expedite the processing
 2-11 of the test so that the results are received less than six hours
 2-12 after the time the sample is submitted.
 2-13 (c-2) If the physician or other person in attendance at the
 2-14 delivery does not find in the woman's medical records results from a
 2-15 diagnostic test for HIV infection performed under Subsection (a-1),
 2-16 and the diagnostic test for HIV infection was not performed before
 2-17 delivery under Subsection (c-1), the physician or other person in
 2-18 attendance at delivery shall:
 2-19 (1) take or cause to be taken a sample of blood or
 2-20 other appropriate specimen from the newborn child less than two
 2-21 hours after the time of birth;
 2-22 (2) submit the sample to an appropriately certified
 2-23 laboratory for a diagnostic test approved by the United States Food
 2-24 and Drug Administration for HIV infection; and
 2-25 (3) instruct the laboratory to expedite the processing
 2-26 of the test so that the results are received less than six hours
 2-27 after the time the sample is submitted.
 2-28 (i) Before conducting or causing to be conducted a
 2-29 diagnostic [~~standard serologic~~] test for HIV infection under this
 2-30 section, the physician or other person shall advise the woman that
 2-31 the result of a test taken under this section is confidential as
 2-32 provided by Subchapter F, but that the test is not anonymous. The
 2-33 physician or other person shall explain the difference between a
 2-34 confidential and an anonymous test to the woman and that an
 2-35 anonymous test may be available from another entity. The physician
 2-36 or other person shall make the information available in another
 2-37 language, if needed, and if resources permit. The information
 2-38 shall be provided by the physician or another person, as needed, in
 2-39 a manner and in terms understandable to a person who may be
 2-40 illiterate if resources permit.
 2-41 (j) The result of a [~~standard~~] test for HIV infection under
 2-42 Subsection (a)(2)(B), (a-1), (c-1), or (c-2) [~~(c)(2)(B)~~] is a test
 2-43 result for purposes of Subchapter F.
 2-44 (k) Before the [~~blood~~] sample is taken, the health care
 2-45 provider shall distribute to the patient printed materials about
 2-46 AIDS, HIV, hepatitis B, and syphilis. A health care provider shall
 2-47 verbally notify the patient that an HIV test shall be performed if
 2-48 the patient does not object. If the patient objects, the patient
 2-49 shall be referred to an anonymous testing facility or instructed
 2-50 about anonymous testing methods. The health care provider shall
 2-51 note on the medical records that the distribution of printed
 2-52 materials was made and that verbal notification was given. The
 2-53 materials shall be provided to the health care provider by the
 2-54 department [~~Texas Department of Health~~] and shall be prepared and
 2-55 designed to inform the patients about:
 2-56 (1) the incidence and mode of transmission of AIDS,
 2-57 HIV, hepatitis B, and syphilis;
 2-58 (2) how being infected with HIV, AIDS, hepatitis B, or
 2-59 syphilis could affect the health of their child;
 2-60 (3) the available cure for syphilis;
 2-61 (4) the available treatment to prevent
 2-62 maternal-infant HIV transmission; and
 2-63 (5) methods to prevent the transmission of the HIV
 2-64 virus, hepatitis B, and syphilis.
 2-65 (l) A physician or other person may not conduct a diagnostic
 2-66 [~~standard~~] test for HIV infection under Subsection (a)(2)(B),
 2-67 (a-1), or (c-1) [~~(c)(2)(B)~~] if the woman objects. A physician or
 2-68 other person may not conduct a diagnostic test for HIV infection
 2-69 under Subsection (c-2) if a parent, managing conservator, or

3-1 guardian objects.

3-2 SECTION 3. Subsections (d), (e), (f), and (h), Section
3-3 81.090, Health and Safety Code, are repealed.

3-4 SECTION 4. (a) Subsections (a), (c), (i), and (k), Section
3-5 81.090, Health and Safety Code, as amended by this Act, apply only
3-6 to a test performed on or after the effective date of this Act. A
3-7 test performed before the effective date of this Act is covered by
3-8 the law in effect immediately before the effective date of this Act,
3-9 and the former law is continued in effect for that purpose.

3-10 (b) Subsections (a-1), (c-1), and (c-2), Section 81.090,
3-11 Health and Safety Code, as added by this Act, and Subsections (b),
3-12 (j), and (l), Section 81.090, Health and Safety Code, as amended by
3-13 this Act, apply only to a physician or other person attending a
3-14 pregnant woman during gestation or at delivery of an infant on or
3-15 after January 1, 2010.

3-16 SECTION 5. This Act takes effect September 1, 2009.

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